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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BC66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Reef Fish Fishery of the Gulf of Mexico; Amendment 37

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 37 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 37 proposes to modify the gray triggerfish rebuilding plan; revise the commercial and recreational sector's annual catch limits (ACLs) and annual catch targets (ACTs) for gray triggerfish; revise the recreational sector accountability measures (AMs) for gray triggerfish; revise the gray triggerfish recreational bag limit; establish a commercial trip limit for gray triggerfish; and establish a fixed closed season for the gray triggerfish commercial and recreational sectors. The intent of Amendment 37 is to end overfishing of gray triggerfish and help achieve optimum yield (OY) for the gray triggerfish resource in

accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by "NOAA-NMFS-2012-0199", by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0199, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727-824-5305; e-mail: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the Federal Register notifying the public that the plan or amendment is available for review and comment. All gray triggerfish weights discussed in this proposed rule are in round weight.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, to minimize bycatch and bycatch mortality to the extent practicable, and to establish AMs for a stock to ensure ACLs are not exceeded.

Amendment 37 addresses these issues for gray triggerfish.

Status of the Gray Triggerfish Stock

The last Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for gray triggerfish was completed in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was additionally undergoing overfishing. The 2011 update assessment indicated the 2008 gray triggerfish rebuilding plan had not made adequate progress toward ending overfishing and rebuilding the stock. NMFS informed the Council of this determination in a letter dated March 13, 2012. NMFS also requested that the Council work to end overfishing of gray triggerfish immediately and to revise the gray triggerfish stock rebuilding plan.

As a way to more quickly implement measures to end

overfishing and rebuild the stock, the Council requested and NMFS implemented a temporary rule to reduce the gray triggerfish commercial and recreational ACLs and ACTs (77 FR 28308, May 14, 2012). The temporary rule also established an in-season AM for the gray triggerfish recreational sector to be more consistent with the commercial sector AMs and provide for an additional level of protection to ensure that the recreational ACL is not exceeded and that the risk of overfishing is reduced. These interim measures were then extended through May 15, 2013, to ensure that the more permanent measures being developed through Amendment 37 could be implemented without a lapse in these more protective management measures (77 FR 67303, November 9, 2012).

Actions Contained in Amendment 37

Amendment 37 proposes to modify the gray triggerfish rebuilding plan, revise the commercial and recreational sector's ACLs and ACTs for gray triggerfish (the commercial ACT is expressed as the commercial quota in the regulatory text), revise the recreational sector AMs for gray triggerfish, revise the gray triggerfish recreational bag limit, establish a commercial trip limit for gray triggerfish, and establish a establish a fixed closed season for the gray triggerfish commercial and recreational sectors.

Modifications to the Gray Triggerfish Rebuilding Plan

Amendment 37 would revise the rebuilding plan for gray

triggerfish. The gray triggerfish stock is currently in the 5th year of a rebuilding plan that began in 2008. Amendment 37 would modify the rebuilding plan in response to the results from the 2011 SEDAR 9 Update and the Council's subsequent Scientific and Statistical Committee (SSC) review and recommendations for the gray triggerfish allowable biological catch (ABC). The modified rebuilding plan would be based on a constant fishing mortality rate that does not exceed the fishing mortality rate at OY.

ACLs and ACTs

Amendment 37 would revise the ACLs for the gray triggerfish commercial and recreational sectors. Amendment 37 would also revise the ACTs (commercial ACT expressed as a quota in the regulatory text) for both sectors.

The Council's SSC reviewed the gray triggerfish 2011 SEDAR 9 Update. The SSC recommended that the ABC for gray triggerfish for the 2012 and 2013 fishing years be set at 305,300 lb (138,346 kg). Based on this recommendation, the commercial and recreational ACLs and ACTs for the gray triggerfish need to be updated.

In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC (73 FR 38139, July 3, 2008). These allocations are used to set the commercial and recreational

sector-specific ACLs. The ABC recommended by the SSC is 305,300 lb (138,482 kg) and the combined sector ACLs are equal to the ABC. Based on the allocations established in Amendment 30A to the FMP, Amendment 37 would set a reduced commercial ACL of 64,100 lb (29,075 kg), and a reduced recreational ACL of 241,200 lb (109,406 kg).

The Generic Annual Catch Limit Amendment developed by the Council and implemented by NMFS (76 FR 82044, December 29, 2011) established a standardized procedure to set sector-specific ACTs based on the ACLs. ACTs are intended to account for management uncertainty and provide a buffer that better ensures a sector does not exceed its designated ACL. The Council chose to use this procedure, which resulted in a 5 percent buffer between the commercial ACL and ACT, and a 10 percent buffer between the recreational ACL and ACT. Therefore, Amendment 37 would set the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), and the recreational ACT at 217,100 lb (98,475 kg). The proposed ACLs and ACTs in Amendment 37 are the same as those currently in place as implemented through the temporary rule for gray triggerfish (77 FR 28308, May 14, 2012). The current commercial gray triggerfish quota functions as the commercial ACT.

AMs

Amendment 37 proposes to modify the gray triggerfish recreational sector AMs. Currently, the AM for the recreational

sector is triggered if the recreational ACL is exceeded and requires NMFS to reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not exceed the recreational ACT during the following year. Amendment 37 would replace this AM with an in-season AM, in the form of a recreational season closure that would prohibit the recreational harvest of gray triggerfish after the recreational ACT is reached or projected to be reached. This in-season AM would provide an additional level of protection to help ensure that the recreational ACL is not exceeded and reduce the risk of overfishing. Amendment 37 would also add an overage adjustment that would apply if the recreational sector ACL is exceeded and gray triggerfish are overfished. This post-season AM would reduce the recreational ACL and ACT for the following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

Commercial Trip Limit

Currently, there is no trip limit for the commercial sector. Amendment 37 would establish a commercial trip limit for gray triggerfish of 12 fish. This trip limit would allow commercial reef fish fisherman to harvest their incidental catch of gray triggerfish. This trip limit would be applicable until

the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

Seasonal Closure of the Commercial and Recreational Sectors

Amendment 37 would establish a seasonal closure of the gray triggerfish commercial and recreational sectors in the Gulf from June through July, each year. This fixed seasonal closure would occur during gray triggerfish peak spawning season and during the period with the highest percentage of recreational landings.

Recreational Bag Limit

Gray triggerfish currently are part of the 20-fish aggregate reef fish recreational bag limit. As such, there is currently no specific limit for recreational gray triggerfish landings as long as the total is 20 fish or less. Amendment 37 would establish a 2-fish gray triggerfish recreational bag limit within the 20-fish aggregate reef fish bag limit. This recreational bag limit would be applicable until the recreational ACT is reached or projected to be reached during a fishing year and the recreational sector is closed.

Proposed Rule for Amendment 37

A proposed rule that would implement Amendment 37 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 37 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable

law. If the determination is affirmative, NMFS will publish the proposed rule in the Federal Register for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 37 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 37 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 5 p.m. eastern time, on [insert date 60 days after date of publication in the FEDERAL REGISTER], will be considered by NMFS in the approval/disapproval decision regarding Amendment 37.

Authority: 16 U.S.C. 1801 et seq.

Dated: January 17, 2013

Kara Meckley,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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